

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

UNITED STATES OF AMERICA)	JUDGE PAUL R. MATTHEWS
)	
Plaintiff)	CASE NO. 1:99CV11100
)	
-vs-)	<u>SUPPLEMENTAL OPINION</u>
)	
JOHN DEMJANJUK)	
)	
Defendant)	

The Court has entered Findings of Fact and Conclusions of Law in this case, and those documents constitute the judgment of the Court. I write separately to explain the Court's inability to put any substantial credence in the contentions made by defendant to cast doubt on the government's case.

This is a case of documentary evidence, not eyewitness testimony. It is not at all unusual sixty years after an event that eyewitnesses are not available. Indeed, if they were, their testimony would be subjected to close scrutiny because of the effect of time and the ravages of age upon memories and eyewitness identifications. The defendant's successful defense against the "Ivan the Terrible" charges shows the unreliability of eye witness testimony so long after the event.

Documentary evidence, however, is another matter. In this case documents have been retrieved from archives all over eastern Europe and Germany. Defendant has attacked the authenticity of the documents on various grounds, but the expert testimony of the document examiners is devastating to defendant's contentions. The paper, inks, and typewriters used to create the documents were all in use in Europe on the dates shown on the various documents. The defects in the rubber stamps and typewriters are consistent from document to document, and the alignment of the stamp on the photograph and paper of the service identity pass (GX 3) shows that the photograph was indeed the one that was originally affixed to the pass. The randomness and relative rarity of the documents actually supports their authenticity; if the Soviets had set out to create false documents, they would not have allowed the omissions and minor inaccuracies that occur in the trail of documents in this case. The location of these documents in the archives of several different countries also buttresses their authenticity, as their dispersal at the chaotic end of World War II does not seem at all unusual. The various spellings of defendant's last name in the documents actually lends further credence to them, since the conversion from the Cyrillic alphabet to the western alphabet produces such variations and a counterfeiter would probably have used one spelling consistently.

Defendant claims that if the documents are authentic, he is not the person identified by them. The Court believes that the evidence clearly, convincingly and unequivocally shows that he is. As discussed above, the Court is convinced that the Trawniki Service Identity Pass No. 1393 (GX3) for a person named Iwan Demjanjuk is authentic. The Pass correctly describes the defendant's physical characteristics (oval face, dark blond hair, grey eyes, scar on back), father's name, date of birth, and place of birth. The Pass is wrong about defendant's height, but the pass for Ignat Danilchenko also incorrectly listed his height. Interestingly, in 1979 Danilchenko gave a statement in which he said that defendant was "slightly taller" than Danilchenko, roughly 2 to 3 centimeters taller; although the service pass for both men is inaccurate as to height, the difference in the heights listed is 2 centimeters. Thus, the height discrepancy, while it cannot be explained, is not significant when considered in the context of the other evidence.

Defendant is correct that no evidence was produced to prove that the photograph on the service pass is in fact the defendant. He has never admitted that it is he, although he has admitted that the photograph resembles him, and indeed the Court believes that the photograph bears a resemblance to the photograph of defendant taken at a later time. The defendant introduced Exhibit B-7, the report of Donald J. Ortner, Ph.D., a physical

anthropologist, who found that the evidence was not conclusive. However, he also said that defendant could be the same individual shown on the service pass because defendant's face had no physical features which would make it unlikely. He noted that "there are several features that are strikingly similar including orientation of the hair and the size and shape of the nose and mouth." He further observed, "Of particular interest is the morphology of the ear." And while he found the evidence not conclusive, he stated that "In my opinion the continuity of anatomical features between all the photographs supports the possibility that the individual portrayed is the same person." Thus the photograph, while it does not conclusively prove the government's case, certainly does not weaken it either.

Defendant called the Court's attention to the statements, or protocols, of several men who were said to be guards at some of the camps at which defendant was alleged to have been a guard. A thorough reading of these statements, however, shows that they do not carry the weight that defendant ascribes to them. For example, Yakov Engelgard, who trained guards at Trawniki, did not recognize any of the photographs of defendant shown to him: "I did not meet the people shown . . ."; "Their faces are completely unfamiliar to me"; "I know well that the men shown . . . did not serve with me when I served in the death camp in Sobibor. None of them served under me." (DX B23 and B24). But

this non-identification loses most of its significance when viewed in the context of the rest of Engelgard's statements. For example: "I do not deny that some of them might have undergone training in the training camp in Travniki [sic]¹ at the time that I was serving there. I served as a squad commander and then as a platoon commander, but I cannot say that any of them were in my section or platoon. Their faces are completely unfamiliar to me. [Illegible: Perhaps they(?)] were in the training camp in Travniki assigned to other squads." With respect to Sobibor, Engelgard stated he only remained there for 20 days after its construction had been completed. So while the Engelgard statements do not bolster the government's case, neither do they cast any real doubt on it.

Defendant also submitted the June 28, 1949, statement of Vasilij Litvinenko (DX B1) in which he described a fellow Trawniki trainee named Ivan Demyanyuk: year of birth 1918 to 1920, Ukrainian, average height, average build, blond hair, two false white metal teeth in upper jaw. Defendant claims not to have such false teeth. Assuming that to be true, the Court nevertheless is unable to give any credibility to Litvinenko's description, because, curiously, Litvinenko described many of his fellow trainees as having false metal teeth. If such false teeth

¹ The Court will use the spelling "Trawniki." Russian translations usually spell it "Travniki."

were that common, how would he be able to remember which trainees had them? And why would he know who had metal teeth in their upper jaw unless they were all in front? Further detracting from Litvinenko's credibility is the fact that he admitted chronic alcoholism to the point that he once sold his pants for more vodka (GX 103).

Defendant further alleges that the inability of a Sobibor survivor to identify him supports his defense. Dow Freiberg gave a statement May 30, 1976 (DX F6) in which he stated that he knew all the Sobibor Ukrainian guards, that he remembered many names, that he could not recall the name Demianiuk (sic), and that several Ukrainians had the popular name Ivan. Defendant exaggerates the importance of Freiberg's statement. Freiberg said he remembered many names, not all the names, after more than 30 years. Freiberg said Ivan was a common name, not Demianiuk, as misstated by defendant.

Further, Freiberg was shown several photographs of Ukrainians, and he indicated that the person in No. 16 (a photograph of defendant) seemed familiar, but that he couldn't identify anybody with certainty.

Another of defendant's exhibits (DX B3) is a statement taken from Ivan Ivchenko on September 18, 1979. Ivchenko didn't remember any names of the other Soviet soldiers in his company. He claimed to have been sent to Trawniki at the

beginning of 1942 and to Sobibor in May 1943. He did not remember the names of the other watchmen and did not remember the name "Demjanjuk" from Trawniki or Sobibor. However, "I do not rule out the fact that I knew this watchman by face, as I did many others." He escaped from Sobibor in July 1943.

He identified a photograph of Demjanjuk as "known to him" from general facial features. He had seen this guard at Trawniki in 1942, but had not had personal relations with him. He did not remember if this person was at Sobibor.

Again, defendant overstates this evidence. Ivchenko did not say he did not recall the "name or face" (sic) of defendant at Sobibor; he said he remembered no names and did not remember if this person was at Sobibor.

The defendant points out that Ivchenko claims to have left Trawniki in May 1942, while the government contends that defendant arrived there in the summer of 1942. But the Court finds the difference between "May" and "summer" to be very small, especially 37 years later.

Defendant's Exhibits C1 and C2 are the Danilchenko protocols. Ignat Danilchenko served as an SS guard at Sobibor from March 1943 through March or April 1944. He remembered the cook Ivchenko and Ivan Demyanyuk (sic) who was already an SS guard private when he (Danilchenko) arrived. He learned from Demjanjuk that he was from Vinnitsa Oblast. He described Demjanjuk as "2-3

years older than I, had light brown hair with noticeable bald spots, heavyset, had gray eyes, and was slightly taller than I, roughly 186-187 cm tall." He claimed to remember Demjanjuk's appearance well. Demjanjuk told him he had been trained at Trawniki. Although he did not personally see any wounds on Demjanjuk, he did not know whether he had any.

He said that in March or April 1944, he and Demjanjuk were sent from Sobibor to Flossenbürg, where they were all given a blood-type tattoo.

In late autumn 1944, he claimed that he and Demjanjuk were sent to Regensburg as escort for 200 political prisoners. In April of 1945, the entire camp was marched toward Nuremberg; Danilchenko escaped along the way, he said.

Danilchenko identified three photographs of Demjanjuk on three separate sheets (in military uniform and in civilian clothing). On the first two sheets he recognized Demjanjuk from facial features: oval face, chin, shape of eyes and protruding ears, and on the third sheet, it was general facial features.

Defendant points out that the photographic identification was based only on general facial features, but this is true only as to the third sheet of photographs, which show an older Demjanjuk. Danilchenko listed specific facial features in his identification of the first two photographs. Defendant also

claims Danilchenko's physical description of the man he knew as Demjanjuk is inconsistent with that of the defendant on trial and with GX 3, but with one exception, the discrepancy is not great:

Danilchenko's <u>Physical Description</u>	GX 3	Defendant on Trial
Oval face	Oval face	Oval face
Light brown hair	Dark blond hair	
Heavysset	----	Heavysset
Gray eyes	grey eyes	
186-187 cm tall	175 cm tall	
-	Scar on back	scar on back (admitted)

Defendant also claims Danilchenko is inconsistent with GX 5, the document authorizing transfer of guards from Trawniki to Sobibor, which lists both Danilchenko and a Demjanjuk. Dated March 26, 1943, it is translated as follows: "Effective today, the following guards will be brought from Trawniki Training Camp to the above place of duty for the purpose of exchange." Defendant claims this puts Danilchenko and the listed Demjanjuk as arriving at Sobibor at the same time, whereas Danilchenko recalled (36 years later) that Demjanjuk was already at Sobibor when he arrived. But GX 5 does not necessarily show that all the listed guards arrived at Sobibor at the same time; it merely shows that their transfer was authorized at one time. Danilchenko did not say how long Demjanjuk had been at Sobibor; it could have been as little as a day or two.

Defendant also relies on the Mikhail Razgonyayev protocol (DX F4). Razgonyayev was a Trawniki-trained guard. Defendant points to Razgonyayev's statement that "I do not remember Ivan Nikolayevich Demyanyuk. If . . . he was in . . . Travniki (Poland) or . . . Sobibor . . ., then I should have met him. However, I do not remember him"

But Razgonyayev went on to say: "Because of the years, I do not remember the names of the prisoners-of-war who were sent to the training camp of the SS troops in Travniki with me." He also didn't remember the name of the German officer who was the Sobibor director. He concluded his statement by saying, "During my service in the Travniki training camp and Sobibor death camp, I communicated little with the watchmen and do not remember any of their names." The Court, therefore, cannot ascribe much significance to Razgonyayev's statement.

Although defendant claims he was not at the camps indicated by the documentary evidence, he has not given the Court any credible evidence of where he was during most of World War II after the prisoner-of-war camp at Rovno. Defendant did not testify in person at the trial of this case, but his testimony on previous occasions was introduced as evidence in this case. The Court thoroughly reviewed his prior testimony and was struck by the almost complete absence of any specific detail of the kind that would lend credence to his version. Moreover, his testimony

changed concerning dates, work assignments, how he came to list Sobibor as a place of residence when he filled out his Application for Assistance to the Preparatory Commission of the International Refugee Organization, and other matters.

The government had the burden of proving its contention to the Court by clear, convincing, and unequivocal evidence. It did so. Although the Court carefully considered the evidence submitted by defendant to attempt to keep the government from satisfying its burden, the defendant's evidence was not sufficiently credible to cast doubt on the documentary evidence.


Paul R. Matia

JUDGE PAUL R. MATIA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

CERTIFICATE OF SERVICE

A copy of this Supplemental Opinion has been sent by regular United States mail this 21st day of February, 2002, to Michael Anne Johnson, Esq., Assistant U.S. Attorney, 1800 Bank One Center, 600 Superior Avenue, East, Cleveland, Ohio 44114-2600; Edward A. Stutman, Esq., Office of Special Investigations, Criminal Division, U.S. Department of Justice, 1001 G Street,

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JUDGE PAUL R. MATIA
CHIEF JUDGE
UNITED STATES DISTRICT COURT